



U.S. House of Representatives Committee on the Judiciary F. James Sensenbrenner, Jr., Chairman

<http://judiciary.house.gov>

News Advisory

For immediate release
October 20, 2005

Contact: Jeff Lungren/Terry Shawn
202-225-2492

Sensenbrenner Praises House Passage of Bipartisan Legislation Curbing Frivolous Lawsuits Against Gun Manufacturers

Measure Now Goes to President Bush for His Signature

WASHINGTON, D.C. – The House today by a 283-to-144 margin passed bipartisan legislation curbing frivolous lawsuits filed against gun manufacturers. S. 397, the “Protection of Lawful Commerce in Arms Act,” has already passed the Senate and now goes to President Bush for his signature. House Judiciary Committee Chairman F. James Sensenbrenner, Jr. (R-Wis.), made the following remarks in support of the bill today on the House floor:

Mr. Speaker, I rise in support of S. 397, the “Protection of Lawful Commerce in Arms Act.” This legislation passed the Senate by more than a two-thirds vote this summer and contains the same legal reform provisions as H.R. 800, sponsored by the gentleman from Florida, Mr. Stearns. The Committee on Judiciary considered and favorably reported H.R. 800 in May of this year. Just like H.R. 800, and similar legislation that passed the House by more than a two-thirds majority during the last Congress, S. 397 will stop frivolous and abusive lawsuits against manufacturers and sellers of firearms or ammunition by prohibiting lawsuits resulting from the criminal or unlawful misuse of their products from being filed in State or Federal court.

It is important to stress at the outset what this legislation does not do. First, the legislation does not preclude lawsuits against a person who transfers a firearm or ammunition knowing it will be used to commit a crime of violence or a drug trafficking crime. Second, it does not prevent lawsuits against a seller for negligent entrustment or negligence *per se*. Third, the bill includes several additional exceptions, including an exception for actions in which a manufacturer or seller of a qualified product knowingly violates any State or Federal statute applicable to sales or marketing when such violation was a proximate cause of the harm for which relief is sought. Finally, the bill contains additional exceptions for breach of contract or warranty in connection with the purchase of a firearm or ammunition, and an exception for actions for damages resulting directly from a defect in design or manufacture of a firearm or

ammunition.

Recent trends in abusive litigation have inspired lawsuits against the firearms industry on theories of liability that would hold it financially responsible for the actions of those who use their products in a criminal or unlawful manner. Such lawsuits threaten to rip tort law from its moorings in personal responsibility, and may force firearms manufacturers into bankruptcy. While some of these lawsuits have been dismissed, and some states have acted to address them, the fact remains that these lawsuits continue to be aggressively pursued. The intended consequences of these frivolous lawsuits could not be more clear – financial ruin of the firearms industry. As one of the personal injury lawyers suing American firearms companies told the *Washington Post*, “The legal fees alone are enough to bankrupt the industry.”

Lawsuits seeking to hold the firearms industry responsible for the criminal and unlawful use of its products are brazen attempts to accomplish through litigation what has not been achieved by legislation and the democratic process. Various courts have correctly described such suits as “improper attempt[s] to have [the] court substitute its judgment for that of the legislature.” As explained by another Federal judge “the plaintiff’s attorneys simply want to eliminate handguns.”

Personal injury lawyers are seeking to obtain through the courts stringent limits on the sale and distribution of firearms beyond the court’s jurisdictional boundaries. A New York Appeals Court stated recently that “courts are the least suited, least equipped, and thus the least appropriate branch of government to regulate and micro-manage the manufacturing, marketing, distribution and sale of handguns.”

Law enforcement, and military personnel rely on the domestic firearms industry to supply them with reliable and accurate weapons that can best protect them in the line of fire. The best and most reliable guns will not be those designed under requirements personal injury attorneys seek to impose through firearms lawsuits. Rather, these lawsuits threaten to injure the domestic firearms industry, endanger the jobs of thousands of hardworking Americans, and provide to foreign manufacturers an unfair advantage.

One abusive lawsuit filed in a single county could destroy a national industry and deny citizens nationwide the right to keep and bear arms guaranteed by the Constitution. Insofar as these lawsuits have the practical effect of burdening interstate commerce in firearms, Congress has the authority to act under the Commerce Clause of the Constitution. The Lawful Commerce in Arms Act, by prohibiting abusive lawsuits against the firearms industry, supports core federalism principles articulated by the United States Supreme Court, which has made clear that “one State’s power to impose burdens on the interstate market. . . is not only subordinate to the Federal power over interstate commerce, but is also constrained by the need to respect the interests of other States. . .”.

Before closing, I think it is important to set the record straight on one item. Some news outlets have claimed that this legislation would have barred a lawsuit involving the D.C. sniper and the gun the sniper obtained after it was stolen from a Washington State gun shop that didn't keep track of its inventory and didn't realize the guns were stolen.

Anyone who actually reads this bill will immediately realize that claim is patently false. Under S. 397, a plaintiff would be permitted to conduct discovery to establish the facts and circumstances surrounding what happened to the firearm while in the possession, custody, and control of the dealer and how it came into the possession of the criminal shooters. A plaintiff would be permitted to have his or her day in court to try to establish whether the dealer knowingly violated or made any false entry in, or failed to make appropriate entry in, his records, which he is required to keep pursuant to Federal law. I have here a Report of Violations filed by the Bureau of Alcohol, Tobacco, and Firearms regarding the Washington State gun dealer. It contains a record of dozens of violations of federal law, including the following: "the licensee's [that is, the dealer's] bound books were examined and compared to the physical inventory. It was initially determined that there were approximately 300 unaccounted for firearms. *These initial 300+ unaccounted for firearms are considered instances of failure to timely record disposition information in the bound record book.*" So under S. 397, a lawsuit against that dealer could go forward.

Mr. Speaker, this commonsense legislation is long overdue. Congress must fulfill its constitutional duty and exercise its authority under the Commerce Clause to deny a few State courts the power to bankrupt the national firearms industry and deny all Americans their fundamental right to bear arms. I urge the passage of this critical legislation and reserve the balance of my time.

####